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**IN THE SUPREME COURT OF THE
STATE OF IDAHO**

JESSICA L. DEGEUS,

Plaintiff/Respondent,

v.

EDWARD K. DEGEUS,

Defendant/Appellant,

Case No. 039931-2012

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Third Judicial District of the State of Idaho, in and for Owyhee County.

Honorable Susan E. Wiebe, District Judge presiding.

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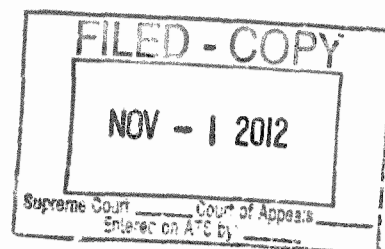


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ARGUMENT

Respondent has admitted that, “The amount entered in that Amended Judgment does not comply with the mandates of the Idaho Child Support Guidelines regarding the awarding of tax exemptions.” (Respondent’s Brief pages 7-8.) This fact has never been in dispute. Respondent goes on to admit, “The determination of M. DeGeus’ child support obligation involves a mathematical exercise.” (Respondent’s Brief page 8.) Respondent then takes the position that mathematical calculations are not clerical in nature.

It is important to note that it is undisputed that the trial court intended to make the adjustment to the child support for the tax exemptions in accordance with the Idaho Child Support Guidelines. It is also undisputed that the calculations submitted by Respondent’s trial counsel contained an error in the mathematical calculations that reversed the adjustment and increased child support when it should have decreased it. What is clear from the briefing is that the question placed before the Court is whether errors in mathematical calculations of the adjustment for the tax exemption are mechanical in nature and therefore clerical mistakes when the order clearly demonstrates that the court intended to award the adjustment.

This is not the same question that faced the Court in *Silsby v. Kepner*, 140 Idaho 410, 95 P.3d 28 (2004). In *Silsby*, the court dealt with a case in which the trial court did not award any offset for Kepner’s share of the tax exemption for the minor child of the parties. In fact there was no mention

of an offset in the decree entered by the court. Two years after entry of the decree Kepner brought an action to modify child support and to correct the failure to give him the offset provided for in the guidelines pursuant to I.R.C.P. Rule 60(a). When the case ultimately reached the Idaho Supreme Court, it found that the record reflected that the magistrate did not originally intend to award the offset, and held that, “Where the magistrate did not intend to make the award in the first place it was not a clerical error to be corrected under Rule 60(a), but rather a legal error that falls outside the remedy of this rule.” *Silsby*, supra, 95 P.3d at 30.

While this specific question regarding application of the Idaho Child Support Guidelines has not previously been answered, the question of errors in mathematical calculations, resulting in an incorrect statement of the amount of the judgment has been answered in Idaho. In *Merrick v. Pearce*, 97 Idaho 250, 542 P.2d 1169 (Idaho 1975), the trial court failed to perform the mathematical calculation off-setting awards to both parties in a suit. The Court upheld the trial court’s correction of the judgment, pursuant to Rule 60(a), to offset the awards by correctly performing the mathematical calculation.

The United States Court of Appeals for the Fifth Circuit specifically identified errors in mathematical calculation as clerical mistakes, stating, “Clerical mistakes, inaccuracies of transcription, inadvertent omissions, and errors in mathematical calculation are within Rule 60(a)’s scope.” *Rivera v. PNS Stores, Inc.*, 647 F.3d 188, 199 (5th Cir. 2011).

This case deals with an error in mathematical calculation. The error in mathematical calculation is undisputed and is readily apparent on the face of the record. The Appellants position is that errors in the mathematical calculation of child support, including adjustments for the tax exemptions that the record demonstrates the court intended to make are clerical mistakes correctible pursuant to I.R.C.P. Rule 60(a). Respondents position is that such errors in mathematical calculation


are mistakes of law that cannot be corrected under Rule 60(a). The applicable decisions in Idaho and the federal court demonstrates that errors in mathematical calculation are clerical mistakes within the scope of I.R.C.P. Rule 60(a).

Respondent does not dispute the fact that the magistrate court erred in ruling that an affidavit or live testimony was necessary for the motion to correct clerical mistake to be considered.

CONCLUSION

The magistrate court erred in holding that the motion to correct clerical mistake could not be considered without an affidavit or live testimony. In addition, errors in the mathematical calculation of child support, including adjustments for the tax exemptions that the record demonstrates the court intended to make are clerical mistakes correctible pursuant to I.R.C.P. Rule 60(a). It is undisputed and clear on the record that there was an error in the mathematical calculation of the adjustment for the tax exemptions in this case. The decision of the magistrate should be reversed.

DATED this 1st day of November, 2012.



JIM RICE
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was sent on this

1st day of November 2012, to:

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